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June 14, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

227275

VIA ELECTRONIC FILING

RE: STB Finance Docket No. 35141
U S Rail Corporation – Construction and Operation Exemption –
Brookhaven Rail Terminal

Dear Ms. Brown:

Please accept U S Rail Corporation's ("Petitioner") letter response to the Board's invitation, set forth in its June 7, 2010 Decision ("June 7th Decision"), to provide an explanation as to why non-rail related site work and grading and excavation activities at the Brookhaven Rail Terminal ("Site") may be undertaken in advance of the Board issuing final project approval.

The Board previously stated that certain pre-construction site preparation activities designed to enhance the safety, security, and utility of the property would not be subject to Board jurisdiction under 49 U.S.C. §10901, and further stated that these activities would be subject to local oversight. See, Suffolk & Southern Rail Road LLC – Lease and Operation Exemption-Sills Road Realty, LLC, STB Finance Docket No. 35036 (STB served August 27, 2008) ("August 27th Decision"). The Board's August 27th Decision further postulates that whether grading and removal of uneven mounds and pits is within the scope of the Board's October 12, 2007 cease and desist order would depend on the purpose for which such work was undertaken; grading necessary to remedy unsafe conditions or enhance the utility of the Site would not be subject to the former cease and desist order, while grading in preparation for rail construction activities would be.

In reliance thereon, Petitioner and the Town of Brookhaven ("Town" and, together with the Petitioner, "Parties") negotiated a Settlement Agreement providing for certain non-rail related site work and grading and excavation activities, designated Phase I activities, designed to enhance the safety, security and utility of the Site, to begin prior to the Board issuing final project approval. The nature and extent of non-rail related site work, grading and excavation activities contemplated by Phase I under the Settlement Agreement were carefully calculated by the Parties to comply with the Board's August 27, 2008 Decision as activities subject to applicable state and local laws and was intended solely to address the safety of the Site, its security and the utility of the Site for general commercial purposes. No railroad right-of-way preparation work at the Site will occur prior to a decision of the Board authorizing construction of the Terminal. After extensive negotiation with the Town and the issuance of a 'negative declaration' by the Town concluding that the Project would have no significant environmental impact, the Town's governing body approved the Phase I work as part of the overall Settlement Agreement.

The excavation and grading work contemplated in Phase I is designed to begin the process of bringing the Site to a grade level consistent with the existing transportation network adjoining the Site¹. As the site plan filed with the Board indicates, the northern property boundary of the Site paralleling the Long Island Expressway is at an elevation of approximately 86' above sea level, while the southern property boundary paralleling the Long Island Rail Road is at an elevation approximately 90' above sea level. Intermediate elevations vary markedly across the entire Site, reaching as high as approximately 110' above sea level. The fact that the Site is hilly and rolling detracts from its usefulness as an appropriate site for any commercial purpose and, thus, excavation and grading, across the entire Site, is essential to secure its utility for general commercial purposes. No excavation work contemplated by the Parties under Phase I is designed to create a railroad right of way, or to install tracks. There will be no excavation below a level grade. Substantial further excavation would be necessary in preparation for laying track in order to accommodate engineered, sub-grade fill and ballast. That work will only begin after Petitioner has secured final Board approval for the Brookhaven Rail Terminal.

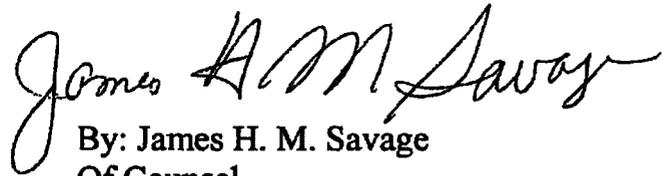
¹ The Phase I excavation of 75,862 cubic yards amounts to only about 12% of what the Parties agree will be the total excavation work necessary to bring the Site to a level grade required to enhance the usefulness of the Site for any commercial purpose.

Petitioner trusts that the explanation set forth herein adequately addresses any Board concern that the work contemplated in Phase I is rail construction and that the Board will permit Phase I work to proceed in accordance with the terms of the Settlement Agreement.

We thank the Board for its time and consideration.

Respectfully submitted,

John D. Heffner, PLLC

A handwritten signature in black ink that reads "James H. M. Savage". The signature is written in a cursive style with a large, prominent "J" at the beginning.

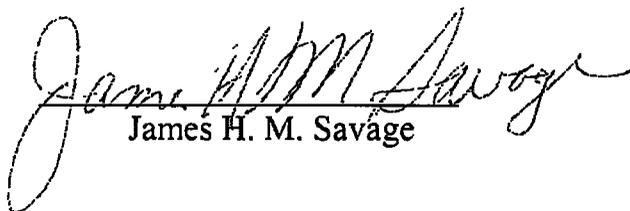
By: James H. M. Savage
Of Counsel

Attorneys for Petitioner
U S Rail Corporation

Cc: Mark Cuthbertson, Esq.
Robert Ryback

CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.


James H. M. Savage

Dated: June 14, 2010